IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 5-1-2007

Coram

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.A.No.1225 of 2003

G. Annamalai ... Appellant

Vs.

1. The Secretary and Commissioner,
Education Department,
Government of Tamil Nadu,
Fort St.George,
Madras - 600 009

2. The Director of School Education,
College Road, Madras - 600 006

3. The Joint Director (Higher Secondary),
College Road, Madras - 600 006.

4. The Secretary,
Theagarayanagar Higher Secondary School,
17, Venkatanarayana Road,
T.Nagar, Madras - 600 017.

5. The Chief Educational Officer,
Anna Salai, Madras - 2.

6. The District Educational Officer,
Madras South, Egmore, Madras - 8.

7. Mrs.N.Nirmala ... Respondents

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This Writ Appeal has been filed under Clause 15 of Letters Patent against the order of the learned single Judge in W.P.No.5439 of 1995 dated 11.10.2002 under article 226 of the Constitution of India a writ of mandamus directing the 4th respondent school to promote the petitioner as Headmaster with effect from 1.6.1985 with all attandant service benefits.

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For Appellant : Mr.G.Rajagopalan,
Senior Counsel
for Mr.S.Chandrasekaran

For RR-1 to 3, 5,6 : Mrs.Bhavani Subbarayan
Government Advocate

For 4th Respondent : Mr.A.V.K.Ezhilmani

J U D G M E N T

N. PAUL VASANTHAKUMAR, J.

This writ appeal is filed against the order of the learned single Judge dated 11.10.2002 made in W.P.No.5439 of 1995, dismissing the writ petition filed by the appellant.

2. Brief facts necessary for disposal of this writ appeal are as follows.

(a) Appellant was working as Post Graduate Teacher (Tamil) and as Assistant Headmaster (PG grade) in the 4th respondent School. The 4th respondent School is a Private Recognised and Aided School. According to the appellant, the post of Headmaster became vacant in the 4th respondent School on 1.6.1985 and a request was made by the appellant to promote him as Headmaster since he was the senior-most Post Graduate Assistant. However, the 4th respondent management selected and promoted one Anthonysamy as Headmaster, against which the appellant filed appeal before the Director of School Education and on 5.1.1987 the appeal was allowed. The 4th respondent management and the said Anthonysamy challenged the said order of the Director of School Education dated 5.1.1987 before this Court in W.P.Nos.581 and 630 of 1987 and this Court by order dated 12.2.1987, set aside the order of the Director of School Education dated 5.1.1987 and remitted the matter back to the Director of School Education with a direction to hear all the parties and decide the case on merits.

(b) The Joint Director of School Education, who is the competent authority, by orders dated 26.10.1987 and 11.11.1987 gave a finding that the said Anthonysamy was not a qualified person to be promoted as Headmaster and directed the management to promote the petitioner as Headmaster. The said order of the Joint Director of School Education was challenged by the 4th respondent in W.P.No.11863 of 1987 and this Court dismissed the said writ petition, against which the management and the said Anthonysamy filed W.A.Nos.331 and 590 of 1988 respectively before this Court. At the time of final hearing, the writ appeals were withdrawn. The Division Bench, while permitting withdrawal of the writ appeals, directed the management and the said

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Anthonysamy to file revision before the Commissioner and Secretary, Education Department, Government of Tamil Nadu.

(c) Thereafter revision was filed by the said Anthonysamy before the Secretary to Government, Education Department, Government of Tamil Nadu. The Government, after hearing the revision, dismissed the same by G.O.Ms.No.623 Education Department, dated 31.5.1991 and upheld the order of the Joint Director of School Education.

(d) It is the case of the appellant that thereafter instead of promoting the appellant, one Rafia Begum was promoted as Headmistress and according to the appellant the said Rafia Begum is also unqualified to be promoted as Headmistress. Therefore the appellant preferred appeal before the Joint Director of School Education (Higher Secondary) and the Joint Director by order dated 8.8.1994 held that the said Rafia Begum is unqualified and cancelled the promotion order issued in her favour. The Joint Director ultimately directed the management to promote a fully qualified person as Headmistress. The said Rafia Begum filed a revision before the Government which was also rejected by G.O.Ms.No.230 Education Department dated 22.3.1995.

(e) According to the appellant, he being the seniormost Post Graduate Teacher, he was given additional charge as Headmaster whenever the Headmaster of the school went on leave. The grievance of the appellant is that the 4th respondent management has not filled up the Headmaster post from 1.6.1985 by a fully qualified person.

(f) It is further stated that though the writ petition was filed in April 1995, the petitioner reached the age of superannuation on 31.8.1995. The request of the appellant to re-employ him till the end of the academic year i.e., till 31.5.1996 was also rejected and the said order was challenged by the appellant in a separate writ petition in W.P.No.13392 of 1995, which was also dismissed by the learned single Judge against which W.A.No.1226 of 2003 has been filed and we are dealing with the said writ appeal separately.

3. First respondent herein, who is the third respondent in the writ petition filed counter affidavit wherein it is stated that after allowing the appeal filed by the appellant challenging the order of promotion given to Rafia Begum, a direction was given to the management to appoint fully qualified teacher as Headmaster in accordance with rules and no specific direction was given to appoint the appellant as Headmaster of the School and that the appellant having retired and having been relieved on 31.8.1995, the first respondent prayed for dismissal of the writ petition.

4. The 4th respondent management filed counter affidavit wherein it is contended that the appellant was found unsuitable for the post of Headmaster by the Management and hence he was not

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promoted to the said post. The claim of the appellant for promotion was considered in accordance with rule 15(4) of the Tamil Nadu Recognised Private Schools Regulation Rules, 1974. Further the appellant was found guilty of five charges and he was awarded the punishment of withholding one increment for one year without cumulative effect by order dated 6.11.1993 and the appeal filed by the appellant against the said punishment was also dismissed by the Joint Director of School Education by order dated 18.8.1995 and the said order has become final as the appellant has not chosen to challenge the same thereafter. It is also stated in the counter affidavit that the earlier promotion of the said Anthonysamy and subsequent promotion of Rafia Begum were not accepted by the department as they are not fully qualified and thereafter they were reverted. On 13.5.1985, the School Committee which is the competent authority for making promotions, considered the merit and eligibility of six P.G.Assistants including the appellant herein. The claim of the appellant having been considered, the appellant cannot have any further grievance that he was not selected. It is also contended in the counter affidavit that the Joint Director of School Education (Higher Secondary) while allowing the appeal of the appellant directed the management to appoint a fully qualified person as Headmaster and no positive direction was given to appoint the appellant as Headmaster and such a direction cannot be issued in the light of rule 15(4)(a) of the Tamil Nadu Recognised Private Schools Regulation Rules, 1974 as the School Committee is the competent authority to select and appoint the Headmaster. It is also contended in the counter affidavit that the petitioner was given the Assistant Headmaster post based on seniority since the Assistant Headmaster post can be filled up merely on seniority and not on selection as per Government Order and merely because the appellant was given the post as Assistant Headmaster (PG Cadre) he has no right to claim the same as a ground to promote him to the post of Headmaster.

5. The learned single Judge relying on Rule 15(4) of the Tamil Nadu Recognised Private Schools Regulation Rules, 1974 held that the action of the management in promoting the unqualified person as Headmaster was disapproved by the management, but that will not give recognition of the appellant to claim the right to hold the post.

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6. The learned Senior Counsel appearing for the appellant argued that the appellant is victimised and his claim was erroneously negatived by the management and by virtue of rejection of his lawful claim, even though he retired on 31.8.1995, if he gets a direction to be promoted as Headmaster, at least he will get monitory benefits and revision of pension and hence the appellant is justified in prosecuting the writ appeal and prayed for allowing the writ petition.

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7. The learned counsel for the 4th respondent management contended that the claim of the appellant was considered as early as in 1985 and he was found not eligible to hold the post of Headmaster and the post being a selection post the appellant has no right to claim the post as a matter of right merely because he is senior-most Post Graduate Teacher in the School.

8. The learned Government Advocate submitted that the appellant was not promoted as Headmaster at any point of time and therefore he cannot claim the salary of Headmaster as well as revision of pay and pension after retirement as early as on 31.8.1995.

9. We have considered the rival submissions and also the order of the learned single Judge.

10. The point in issue is whether the appellant who was not promoted as Headmaster by the 4th respondent management is entitled to claim salary in the post of Headmaster and whether he is entitled to get revision of pension from 1.9.1995.

11. Rule 15 of the Tamil Nadu Recognised Private Schools Regulation Rules, 1974, deals with the qualifications, conditions and services of the Teachers and other persons employed in the private schools. As per Rule 15(4)(i), promotion shall be made on the grounds of merit and ability, and only when the merit and ability are approximately equal, seniority is to be considered. Further, it is stated that while making appointments to various categories of teachers the school management shall follow the following methods,

(i) Promotion among the qualified teachers in that school.

(ii) If no qualified and suitable candidate is available by method

(i) above,

(a) Appointment of other persons employed in that school, provided they are fully qualified to hold the post of teachers.

(b) Appointment of teachers from any other school.

(c) Direct recruitment.

From the perusal of the above rule it is clear that the post of Headmaster is a selection post and the selection is based on merit and ability. Seniority will be considered only when the merit and ability are approximately equal. The 4th respondent considered the merit and ability of the appellant along with five others as early as on 13.5.1985 and found that the petitioner is not fit to be promoted as Headmaster of the School. It is true that the selection of one Anthonysamy originally made and the

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subsequent promotion of Rafia Begum were not approved by the department on the ground that the said persons were not qualified for being promoted as Headmaster/Headmistress of the School. So long as the discretion is vested with the School Committee to appoint teachers and other persons under section 18(b) of the Tamil Nadu Recognised Private Schools Regulation Act, 1973, the discretion exercised by the 4th respondent management in not selecting the appellant for the post cannot be treated as invalid. The department only found that the appointment made in respect of two others viz. Anthonysamy and Rafia Begum are not proper and a further direction was issued to appoint a fully qualified person.

12. Admittedly the appellant was not selected and promoted as Headmaster of the School and he was only Assistant Headmaster (PG grade), for which he was paid salary also. To claim the salary of the post of Headmaster, the appellant should have been appointed and worked in that post. Though the appellant was given in-charge of the post of Headmaster for certain period, that is during the period of leave taken by the Headmaster, he cannot claim that he should be given the scale of pay of the post of Headmaster, particularly when he received the salary of PG Assistant along with the special pay for having held the post of Assistant Headmaster and further having retired from service as PG Assistant on 31.8.1995 with the designation of Assistant Headmaster.

13. (a) The Honourable Supreme Court, in the decision reported in AIR 1966 SC 1547 (State of Orissa v. Durga Charan Das) considered similar rule with regard to promotion by way of selection and in para 6 held as follows,

> "6. The Rule in question protects the conditions of service as respects pay, allowances, leave and pension of the members falling under its purview, and it guarantees that in no case shall the terms in relation to the said conditions of service be less favourable than they were immediately before the 1st of April, 1936. The question is: do any of the conditions specified in R.6 include a claim for promotion to a higher selection post and confirmation in it ? It is well known that promotion to a selection post is not a matter of right which can be claimed merely by seniority. Normally, in considering the question of a public servant's claim for promotion to a selection post, his seniority and his merits have to be considered; and so, it seems to us very difficult to accept the view taken by the High Court that in R.6 of the Protection Rules, a guarantee can be inferred in regard

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to promotion to a selection post. What the Rule guarantees is that the public servants who were transferred to Orissa will not suffer in regard to their pay, allowances, leave and pension; and these respective conditions do not seem to include a claim for promotion to a higher selection post; and indeed, it seems very unlikely that any protection could ever have been reasonably intended to be given in regard to promotion to a selection post."

(b) In AIR 1967 SC 1910 (Sant Ram v. State of Rajasthan), the Honourable Supreme Court in para 6 held thus,

"6. ..... we are of the opinion that the three posts of Inspector General of Police, Additional Inspector General of Police and Deputy Inspector General of Police in Rajasthan State are selection posts and outside the junior or senior time-scales of pay. If these three posts are selection posts it is manifest that the State of Rajasthan is not bound to promote the petitioner merely because he stood first in the Gradation List. The circumstances that these posts are classed as 'Selection Grade Posts' itself suggests that promotion to these posts is not automatic being made only on the basis of ranking in the Gradation List but the question of merit enters in promotion to selection posts. In our opinion, the respondents are fight in their contention that the ranking or position in the Gradation List does not confer any right on the petitioner to be promoted to selection post and that is a well-established rule that promotion to selection grades or selection posts is to be based primarily on merit and not on seniority alone. The principle is that when the claims of officers to selection posts is under consideration, seniority should not be regarded except where the merit of the officers is judged to be equal and no other criterion is, therefore, available. ....."

(c) In the decision reported in (2001) 5 SCC 60 (Central Council for Research in Ayurveda & Siddha v. Dr.K.Santhakumari) in para 12, the Honourable Supreme Court held as follows,

"12. In the instant case, the selection was made by the Departmental Promotion Committee. The Committee must have

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considered all relevant facts including the inter se merit and ability of the candidates and prepared the select list on that basis. The respondent, though senior in comparison to other condidates, secured a lower place in the select list, evidently because the principle of "merit-cum-seniority" had been applied by the Departmental Promotion Committee. The respondent has no grievance that there were any mala fides on the part of the Departmental Promotion Committee. The only contention urged by the respondent is that the Departmental Promotion Committee did not follow the principle of "seniority-cum-fitness". In the High Court, the appellants herein failed to point out that the promotion is in respect of a "selection post" and the principle to be applied is "merit-cum-seniority". Had the appellants pointed out the true position, the learned Single Judge would not have granted relief in favour of the respondent. If the learned counsel has made an admission or concession inadvertently or under a mistaken impression of law, it is not binding on his client and the same cannot ensure to the benefit of any party."

(d) In the decision reported in (2003) 6 SCC 535 (Dwaraka Prasad v. Union of India) in para 24 the Honourable Supreme Court considered the scope of Articles 14 and 16 in the matter of promotion and held thus,

"24. Articles 14 and 16 of the Constitution of India cannot be pressed into service to describe the fixation of lower quota for POs as discriminatory. It is well established in law that the right to be considered for promotion on fair and equal basis without discrimination may be claimed as a legal and a fundamental right under Articles 14 and 16 of the Constitution but chances of promotion as such cannot be claimed as of right. ....."

14. It could be seen from the counter affidavit that on 13.5.1985, the School Committee assessed the merit and ability of all the six candidates including that of the appellant and also the past conduct of the appellant including the punishment imposed. According to the management, the appellant is not fit to be promoted as Headmaster of the School and it is the decision taken by the School Committee, who is the competent authority under the Act. A similar issue arose before a Division Bench of

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this Court in the decision reported in 2002 WLR 81 (S.P.Jalaja v. Karapettai Nadar Girl Higher Secondary School & Ors.) wherein almost in identical circumstances the appellant therein was not given promotion as Headmistress, which was also challenged by the appellant repeatedly and ultimately the Division Bench in para 15 upheld the contention of the School Committee that merit and ability of all the candidates were assessed and the appellant therein was found not suitable. The Division Bench in para 15 held as follows,

> "..... As rightly pointed out by the learned counsel, the School Committee also took into account the entire service career of the candidates who had applied for the higher post. The Headmistress of the School occupies an unique position and she is the linchpin around and the school activities revolve around her and she should have full confidence of the teachers, pupils, school authorities and must have administrative control, managerial skill, financial control over the funds of the school and she must secure full and unstinted co-operation from teachers and pupils for the past performance of the school. Needless to mention, any deficiency on the part of the Headmistress would reflect not upon the individual members, but would reflect on the institution itself."

15. In view of the settled legal position and in the light of Rule 15(4) of the Tamil Nadu Recognised Private Schools Regulation Rules, 1974, the claim of the appellant that he should be retrospectively given promotion with monitory benefits is unsustainable and we hold that the order of the learned single Judge in dismissing the writ petition is in conformity with Rule 15 of the Rules.

16. We do not find any merit in the writ appeal and consequently the writ appeal stands dismissed. No costs.

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To

1. The Secretary and Commissioner, Education Department,
Government of Tamil Nadu,
Fort St.George, Madras - 600 009

2. The Director of School Education, College Road,
Madras - 600 006

3. The Joint Director (Higher Secondary),
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4. The Chief Educational Officer, Anna Salai, Madras - 2.

5. The District Educational Officer, Madras South, Egmore,
Madras - 8.

1 cc tio Mr.k. Vaidyanathan, Advocate, Sr. 1068
1 cc to Mr.S. chandrasekaran, Advocate, Sr. 939
1 cc to A.V.K. Ezhilmani, Advocate, sr. 917
1 cc to the Governemnt Pleader, Sr. 1256

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